IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6572 OF 2005

Smt.Shantabai S. Gaikwad & Ors. : Petitioners

V/s.

The Chief Promoter (Pasha M. Shaikh)

& Ors. : Respondents'

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Mr.U.G.Ketkar with Mr.V.A.Jadhav for the petitioners.

Mr.T.J. Jain for the respondent no.1.

Mr.G.D.Utangale for the respondent no.2.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondent no.3.

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CORAM : S.A. BOBDE, J.

October 3, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioners have filed this petition against the order of the Divisional Joint Registrar, Co-operative

Societies, dismissing the petitioners' "Appeal-cum-Application" for de-registration of the respondent Sai Darshan, Gilbert Hill S.R.A. Co-operative Housing Society Ltd., which is joined through its Chief Promoter.

3. At the outset, Mr.Jain, the learned counsel for the respondent no.1, submits that the petitioners have an alternate remedy by way of filing a revision before the State Government under section 154 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". This argument would undoubtedly have been sustainable, but for the fact that by the impugned order, what is dismissed is the "Appeal-cum-Application". The order would certainly be revisable if it is an appeal and would not be, if it is to be treated as an application. There is no doubt that this confusion is created by the petitioners who themselves styled it as an Appeal-cum-Application. But having regard to the interest of justice, the petitioners ought to have been allowed to elect which remedy they want to pursue.

4. Mr.Ketkar, the learned counsel for the petitioners, submitted that the petitioners intend to pursue only the application under section 21A of the Act for

de-registration.

5. In this view of the matter, the observations in the impugned order that the appeal is barred by limitation are unnecessary and liable to be set aside. In any case, there was no reason for the appellate authority to decide the matter on merits if it was of the view that the appeal is barred by limitation. It is obvious that the authority itself did not clear the confusion by, firstly, asking the petitioners to elect the remedy and, secondly, by deciding only the appeal or application, depending on what the party elects.

6. Accordingly, the impugned order is set aside and the matter is remitted back to the competent authority under section 21A of the Act. The application shall be decided on its own merits, uninfluenced by any observations made by this Court in this order.

7. The rule is made absolute in the above terms.

S.A. BOBDE, J.